

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF
PHARMACY AND FRANCIS SHARK d/b/a SHARK PHARMACY**

Come now Francis Shark d/b/a Shark Pharmacy and Shark Pharmacy, a corporation (hereinafter referred to as "Permit Holder" or "Respondent") and the Missouri Board of Pharmacy (hereinafter referred to as the "Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Permit Holder's permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of §536.060, RSMo (2000), the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under ' 621.110, RSMo (2000), and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Permit Holder acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its permit. Being aware of these rights provided it by operation of law, Permit Holder knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

Permit Holder acknowledges that it has received a copy of the Complaint to on file with the Missouri Administrative Hearing Commission, the investigative reports, and other documents relied upon by the Board in determining there was cause for discipline against Permit Holder's

pharmacy permit. For the purpose of settling this dispute, Permit Holder stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Permit Holder's permit to operate a pharmacy, numbered 5897, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo. The parties agree that this Settlement Agreement and any statements contained herein may not be used for or constitute an admission for any purposes other than to settle the disputes between the parties.

Joint Stipulation of Facts

1. The Board is an agency of the State of Missouri created and established pursuant to § 338.110, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Shark Pharmacy (the "Pharmacy"), is permitted by the Board as a pharmacy, Permit No. 005897. Respondent Shark Pharmacy's permit is, and was at all time relevant herein, current and active.

3. At the time of the events alleged herein, Francis E. Shark was the pharmacist-in-charge of Shark Pharmacy.

4. Francis E. Shark ("Shark") is licensed by the Board as a registered pharmacist, license no. 026959. Respondent Francis E. Shark's license is, and was at all times relevant herein, current and active.

5. Shark was asked by the Board to attend a fact-finding meeting with the Board on April 19, 2006, to answer questions regarding investigative information and allegations concerning the acts and conduct of Shark Pharmacy.

6. Shark retained the services of the law firm of Kilo, Flynn, Billingsley, Trame & Brown, P.C. to represent him in this matter.

7. On or about April 18, 2006, the Board received correspondence from Shark's

attorneys stating that due to health problems, Shark would not be in a position to attend the meeting set for April 19, 2006.

8. Based upon investigative information, the Board, pursuant to § 338.055.4, RSMo, concluded Respondents herein engaged in conduct which would be grounds for disciplinary action by the Board.

Sanitation Violations Against Shark and Shark Pharmacy

9. On or about March 15, 2006, Bud Alexander, an inspector for the Board, visited Shark Pharmacy with the intention to complete a regular inspection of the pharmacy.

10. Upon entering the pharmacy, Inspector Alexander was greeted by a barking and growling dog seated on a couch.

11. On the floor in front of the couch was a container which contained chopped up food.

12. Inspector Alexander spoke with Shark and reminded Shark that on the Inspector's last inspection of the pharmacy, Shark was told that he could not keep or have a dog in the pharmacy.

13. On the floor, in front of the sink and counter where prescriptions were filled, was a container which contained what appeared to be a bone and some cut up meat.

14. At this point, Inspector Alexander concluded his inspection of Shark Pharmacy.

15. On or about March 21, 2006, Inspector Alexander returned to the pharmacy to complete his investigation.

16. Upon the Inspector's arrival, he saw the same dog sitting on a couch next to a couch on which Shark was sitting.

17. The inspector again reminded Shark that during his last inspection, Shark was told that he could not keep or have a dog in the pharmacy.

18. Shark, individually and as PIC of Shark Pharmacy, allowed a dog to remain in the

pharmacy while conducting pharmacy services, even though Shark and the pharmacy had previously been advised that such action was not appropriate.

19. Shark and Shark Pharmacy's history of continuing to allow a dog in the pharmacy demonstrates their repeated noncompliance with regulations governing the practice of pharmacy in Missouri.

20. The dog in question was fed by Shark with prepared raw meat while it was in the licensed pharmacy area.

21. Crumbs, food stains, coffee, a coffee pot, food containers and condiments were found on the counter in the dispensing area of the licensed pharmacy.

22. On another counter area, a can of coffee, a glass mortar and a can of Lysol were found.

23. On or about December 5, 2007, Mike Kidd, an Inspector for the Board of Pharmacy, visited Shark Pharmacy to determine if the dog, which had previously been discovered by Inspector Alexander, remained on the premises.

24. Upon entering the pharmacy, Inspector Kidd was greeted by a barking and snarling dog, brown in color and medium in size. The dog appears to match the photographs and physical descriptions of the canine previously encountered by Inspector Alexander.

25. The dog Inspector Kidd observed was roaming around the pharmacy premises, jumping on and off a couch maintained in the pharmacy lobby, and was photographed both in front of and behind the pharmacy counter.

26. The dog Inspector Kidd observed appeared to keep its bed upon a couch positioned in the pharmacy.

27. During Inspector Kidd's visit, the dog proceeded to slobber and lick the Inspector's clothing without solicitation.

28. At the time of his December 5, 2007 visit, Inspector Kidd utilized a roll of tape to

demonstrate to Shark how the dog's hair had accumulated in the permitted pharmacy area. The tape sample contains hair which appears to be canine in nature.

29. Respondent Francis Shark admitted to Inspector Kidd that his pharmacy was "a mess", but offered to clean it up.

30. The dog Inspector Kidd observed was permitted by Shark to roam behind the pharmacy counter in the drug compounding / prescription area.

31. On December 5, 2007, Inspector Kidd also observed and photographed a miscellaneous wooden cabinet and other pieces of clutter near the entrance to the pharmacy.

32. As recently as December, 2007, Francis Shark, individually and as PIC of Shark Pharmacy, allowed a dog to remain in the pharmacy while conducting pharmacy services, even though Shark and the pharmacy had previously been advised that such action was not appropriate.

33. Francis Shark and Shark Pharmacy's history of continuing to allow a dog in the pharmacy demonstrates their repeated noncompliance with regulations governing the practice of pharmacy in Missouri.

34. Francis Shark and Shark pharmacy's practice of keeping, feeding, housing, and permitting a dog to roam the pharmacy poses a health and safety threat to customers and employees of the pharmacy.

35. Shark and Shark Pharmacy's conduct alleged herein constitutes misconduct of the performance of and misconduct in the functions and/or duties of both a licensee and a permitted pharmacy.

36. Shark and Shark Pharmacy's conduct alleged herein violated the drug laws of Missouri.

Conclusions of Law

37. Francis Shark and Shark pharmacy's failure to maintain the pharmacy in a clean

and sanitary condition is in violation of 4 CSR 220-2.010(1)(F) which states in pertinent parts in pertinent parts:

(F) All pharmacies shall be maintained in a clean and sanitary condition at all times. Any procedures used in the dispensing, compounding and mixture of drugs or drug-related devices must be completed under clean and, when recommended, aseptic conditions.

* * *

2. Appropriate housekeeping and sanitation of all areas where drugs are stored or dispensed must be maintained.

38. As pharmacist-in-charge, Shark failed to comply with the provisions of 20 CSR 2220-2.090(2) which states in pertinent parts:

(2) The responsibilities of a pharmacist-in-charge, at a minimum, will include:

* * *

(M) The pharmacy be kept in a clean and sanitary condition;

* * *

(P) Policies and procedures are in force to insure safety for the public concerning any action by pharmacy staff members or within the pharmacy physical plant;

* * *

(W) Assure full compliance with all state and federal drug laws and rules.

39. Cause exists for Petitioner to take disciplinary action against Respondents' pharmacy permit under § 338.055.2, RSMo, which states in pertinent parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter.

(6) Violation of, assisting or enabling any person to violate, any provision of this chapter, in the performance of the functions or duties of any profession licensed or regulated by this chapter.

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

40. Cause exists for Petitioner to take disciplinary action against Respondents' pharmacy permit under §338.285, RSMo, which states:

The board is hereby authorized and empowered, when examination or inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated or conducted according to such legal rules and regulations and the laws of Missouri with respect thereto, to cause a complaint to be filed before the administrative hearing commission pursuant to chapter 621, RSMo, charging the holder of a permit to operate a pharmacy with conduct constituting grounds for discipline in accordance with section 338.055.

41. Cause exists for Petitioner to take disciplinary action against Respondents' pharmacy permit under 4 CSR 220-2.010(1)(N) which states:

(N) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §621.045.3, RSMo (2000):

1. Permit Holder's permit no 5897 shall be surrendered, effective immediately upon execution of the attached Affidavit of Voluntary Surrender of Pharmacy Permit.

2. That the terms and conditions set forth in the attached Affidavit of Voluntary Surrender of Pharmacy Permit shall apply and herein bind the parties including Francis Shark, Shark Pharmacy and all of its corporate members, representatives, shareholders, and/or owners.

3. Permit Holder agrees not to submit an Application for New Pharmacy Permit in the name of Francis Shark or Shark Pharmacy for a period of seven (7) years from the date of the Settlement Agreement herein executed.

4. No other corporate representative of Shark Pharmacy, if any, shall be allowed to submit an Application for New Pharmacy Permit for a period of seven (7) years from the date of the Settlement Agreement herein executed.

PERMIT HOLDER
SHARK PHARMACY

By: Francis Shark
Authorized Owner and Corporate Representative
Of Shark Pharmacy

Date: 2/8/

MISSOURI BOARD OF PHARMACY

By: Debra Ringgenberg
Debra Ringgenberg
Executive Director

Date: 2/18/08

NEWMAN, COMLEY & RUTH
P.C.

By: Lanette R. Gooch
Robert K. Angstead #37795
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601 Monroe, Suite 301
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Telephone: 573/634-2266
Fax: 573/636-3306

Attorneys for Missouri Board of
Pharmacy

01/18/2008

13:00

NEWMAN, COMLEY & RUTH → 13148301355

NO. 921

010

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PERMIT HOLDER
SHARK PHARMACY

MISSOURI BOARD OF PHARMACY

By: Francis Shark
Authorized Owner and Corporate Representative
Of Shark Pharmacy

By: Debra Ringgenberg
Debra Ringgenberg
Executive Director

Date:

1/18/08

Date:

2/18/08

NEWMAN, COMLEY & RUTH
P.C.

By:

Robert K. Angstead #37795
Lanette R. Gooch #47860
601 Monroe, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
Telephone: 573/634-2266
Fax: 573/636-3306


Attorneys for Missouri Board of
Pharmacy

STATE OF _____)
) ss.
COUNTY OF _____)

4. The undersigned understands and agrees that by voluntary surrender of pharmacy permit #5897, this permit becomes as if it were revoked for purposes of regaining licensure in the State of Missouri. The undersigned further understands and agrees that if, after seven (7) years, Shark Pharmacy or any authorized corporate representative thereof should apply for licensure as a pharmacy in the State of Missouri following the execution of this Affidavit, all facts and information, if any, gathered prior to execution of this affidavit by the Missouri Board of Pharmacy concerning any possible or alleged violations of Chapter 338, RSMo, may be considered in the Board's decision of whether to grant a new pharmacy permit.

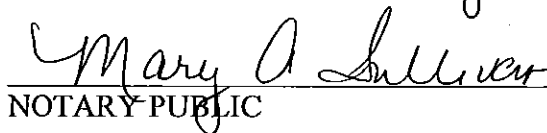
5. It is further understood that pharmacy permit #5897 will not be returned to Shark Pharmacy by the Missouri Board of Pharmacy upon request, but that permit will cease to exist when it is surrendered upon execution of this Affidavit.

6. I acknowledge and affirm by this sworn statement that no threats, promises, or assurances of any kind have been made to me regarding the voluntary surrender of this pharmacy permit except as noted above, nor have I been threatened or coerced to so act in any way, but rather, Shark Pharmacy hereby voluntarily surrenders pharmacy permit #5897 in the State of Missouri by and with this affidavit.



Francis J. Shark, R.Ph.
Owner, Duly Authorized Corporate Representative and
Pharmacist-in-Charge of Shark Pharmacy

Subscribed and sworn to before me this 8th day of February, 2008.


NOTARY PUBLIC

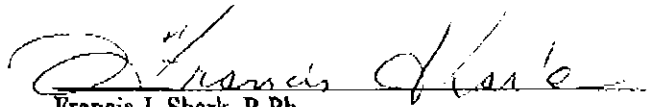
My Commission Expires:

6-19-2011
(Print, type or stamp name of notary)

MARY A. SULLIVAN
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: June 19, 2011
Commission # 07081978

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Francois J. Shark, R.Ph.

Owner, Duly Authorized Corporate Representative and
Pharmacist-in-Charge of Shark Pharmacy

Subscribed and sworn to before me this 18 day of January, 2008.


NOTARY PUBLIC

My Commission Expires:

MARY A. SULLIVAN

Notary Public - Notary Seal

(Print, type or stamp name of notary)
STATE OF MISSOURI
St. Louis County

My Commission Expires: June 19, 2011

Commission # 07081976